

the purpose of cultivating and harvesting the crop which was planted prior to the sale of the land, and the purchaser of the land should be notified at the time of sale of such right.

January 6, 1944.

Mr. Homer A. Hoover
County Attorney
McCone County
Circle, Montana

Dear Mr. Hoover:

You have requested my opinion concerning the following:

Tax deed land was leased October 7, 1941 for a period of time commencing on the date of the lease and ending March 1, 1945. The lease provides that the land may be sold during the term of the lease, in the discretion of the board of county commissioners, as provided by Section 5, Chapter 171, Laws of 1941, and possession to be given to the purchaser on March 1st following the date of sale. The lessee of the land has planted winter wheat.

The questions you ask concerning the above facts are:

1. Is it mandatory, in view of Chapter 147, Laws of 1943, for the county to sell tax deed land which is held under lease if the county receives an offer to purchase for the appraised value, or an amount in excess of ninety per cent of the appraised value?
2. What are the rights of the lessee in regard to crops which are planted, but not yet harvested, if the lease is terminated by sale?

Opinion No. 159.

**County Commissioners—Tax Deed
Lands—Sales—Crops.**

Held: It is not mandatory for a county to sell tax deed land which has been leased if the county receives an offer to purchase the land for the appraised value, or an amount in excess of ninety percent of the appraised value. A lessee of tax deed lands whose lease has been terminated by a sale of the land has the right to enter upon the land after the termination of his lease for

In answering your first question it is necessary to consider Section 5, Chapter 171, Laws of 1941, as amended by Chapter 82, Laws of 1943. This section provides that if tax deed land which has been offered for sale, but not sold, "the county commissioners may, if deemed for the best interest of the county, lease said lands. . ." It also provides "lands leased for all purposes may be subject to sale at the discretion of the board of county commissioners during the term of the lease, except land leased to the United States for military purposes." It is apparent that

the county commissioners may use their sound discretion in two particulars: First, as to whether to lease the land at all and second, having leased the land whether to sell the land during the term of the lease, except lands leased to the United States for military purposes.

Chapter 147, Laws of 1943, provides in part:

"Whenever tax deed lands now held, or hereafter acquired, by any county of this state, have been leased pursuant to the provisions of Section 5, Chapter 171 of the Laws of the twenty-seventh legislative assembly, and thereafter the board of county commissioners shall receive an offer for the purchase of said lands under the provisions of Section 4, Chapter 171 of the laws of the twenty-seventh legislative assembly, the said board shall by registered mail notify the lessee, who shall have a period of thirty (30) days after the mailing of such notice within which he may purchase the leased property at the appraised value thereof."

The use of the words "shall by registered mail notify the lessee" are mandatory, but they are to be construed and applied in accordance with the legislative intent.

The title of Chapter 147, Laws of 1943, reads as follows:

"An Act Granting to the Lessee of Tax Deed Lands the Opportunity to Purchase the Same in the Event of the Proposed Sale Thereof, and Allowing the Board of County Commissioners to Reappraise, Readvertise and Sell the Same at Public Auction."

It would seem after consideration of the title it was the legislative intent that a preferential opportunity to purchase be given to the lessee in possession and that it is mandatory for the county commissioners to give the lessee the first right to purchase, if the land is sold at the appraised value or not less than ninety per cent of the appraised value.

Resort to the title of an act for determining the legislative intent is recognized by our Court. (*Barney v. Board of Railroad Commissioners*, 93 Mont. 115, 17 Pac. (2nd) 82.)

It is also to be noted that Chapter 147, Laws of 1943, states, "Whenever

tax deed lands . . . have been leased pursuant to the provisions of Section 5, Chapter 171, of the laws of 1941 as amended. . ." This does not amend or repeal Chapter 171 but recognizes the provisions of Chapter 171 by the use of the words, "have been leased pursuant to," and one of the provisions of Chapter 171 is that power to sell leased land is discretionary, except as above noted.

It is therefore my opinion that it is not mandatory for a county to sell tax deed land which has been leased where the county receives an offer to purchase the land for the appraised value, or an amount in excess of ninety per cent of the appraised value. The matter is a question for the sound discretion of the board of county commissioners to determine for the best interests of the county, but in the event the commissioners determine it for the county's best interests, then notice and the preference contained in Chapter 147, Laws of 1943, become operative. With this interpretation effect may be given to both Chapter 82 and Chapter 147, Laws of 1943.

In answering your second question it is necessary to consider the situation of the lessee. His lease provided for termination in the event of sale and that possession should be given to the purchaser March first following the date of sale. He could anticipate that he might not be entitled to possession during the time he should be harvesting his winter crop. However, the lessee has expended work and labor in sowing and cultivating the crop and in 15 Am. Jur. 216 the text states:

"The doctrine or right of emblements entitles one who holds land for a period subject to termination at a time which he cannot ascertain beforehand to remove from the land after the termination of his tenancy the annual crops or emblements which he has planted thereon prior to such termination, if the termination is brought about without any act of his intended to bring about such result. The doctrine allows the tenant to enter upon the land, to cultivate his immature crops, and harvest them when they became mature, but this right is merely one of ingress and egress for necessary purposes."

It is therefore my opinion that a lessee of tax deed lands whose lease

has been terminated by a sale of the land has a right to enter upon the land after the termination of his lease for the purpose of cultivating and harvesting the crop which was planted prior to the sale of the land, and the purchaser of the land should be notified at the time of sale of such right, and an understanding reached as to such right of the lessee.

Sincerely yours,
R. V. BOTTOMLY
Attorney General